



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

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06-05-07
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Order Instituting Rulemaking to Promote Policy)	
and Program Coordination and Integration in)	
Electric Utility Resource Planning.)	Rulemaking 04-04-003
)	(Filed April 1, 2004)
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Order Instituting Rulemaking to Promote)	
Consistency in Methodology and Input)	
Assumptions in Commission Applications of)	Rulemaking 04-04-025
Short-run and Long-run Avoided Costs, Including)	(Filed April 22, 2004)
Pricing for Qualifying Facilities.)	

**MOTION TO STRIKE APPENDICES TO OPENING AND REPLY COMMENTS
OF THE CALIFORNIA COGENERATION COUNCIL AND TO THE REPLY
COMMENTS OF THE COGENERATION ASSOCIATION OF CALIFORNIA
AND THE ENERGY PRODUCERS AND USERS COALITION**

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STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy)	
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**MOTION TO STRIKE APPENDICES TO OPENING AND REPLY COMMENTS
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I. INTRODUCTION

Pursuant to Article 11 of the Commission's Rules of Practice and Procedure (Rules), Pacific Gas and Electric Company (PG&E) (U39-E), Southern California Edison Company (SCE) (U338-E) and San Diego Gas and Electric Company (SDG&E) (U902-E) move to strike certain appendices attached to the opening comments on the Proposed Decision of Administrative Law Judge (ALJ) Halligan filed by the California Cogeneration Council (CCC) and to strike all appendices attached to the reply comments of the CCC and the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) filed on June 4, 2007. The appendices are mere subterfuges to avoid the page limits imposed by Article 14, as extended by Chief ALJ Cooke in this proceeding. The appendices should also be stricken as they contain new analysis that is not included in the record of this proceeding.

II. DISCUSSION

The QF Parties' egregious violation of the Commission's rules and ALJ Cooke's rulings in this proceeding require the Commission to take action to ensure compliance with its rules by organizations and attorneys who regularly appear before it. Rule 14.3 sets forth the applicable rules for comments on proposed or alternate decisions. Subdivision (b) allows opening comments of "15 pages in length" to be filed. It requires the parties to file "an appendix setting forth proposed findings of fact and conclusions of law" which does "not count against the page limit." The Commission's rules do not allow the admission of new information not contained in the record in comments on proposed decisions. *Re AT&T Communications of California, Inc.*, D.02-09-049, pp.33-34 (discussing the prior version of Rule 14.3).

ALJ Cooke extended the page limit for opening comments to 25 pages on May 4, 2007. (Notice of this ruling is attached hereto as Appendix A.) ALJ Cooke also extended the page limit for reply comments to 10 pages on May 9, 2007. (Notice of this ruling is attached hereto as Appendix B.)

1. CCC's Opening And Reply Comments Violated Rule 14.3, as Modified By ALJ Cooke's Rulings.

On May 25, 2007 CCC filed its opening comments on the proposed decision and on May 31, 2007, it filed its amended opening comments on the proposed decision. Both sets of comments contained 25 pages of argument, which largely reargued positions CCC took in its earlier briefs. In addition, CCC attached two "appendices" B and C containing additional argument, in violation of the Commission's page limit requirements. CCC attached to its opening comments as Appendix B, a purported "sample application of the proposed heat rate collar," including two new figures, that is not in the record in this proceeding. The record in this proceeding closed in February 2006 and the data it analyzed is not included in the record. CCC also attached an Appendix C, containing proposals for gas prices, which discussion should have been included in its opening comments. Both appendices B and C to its opening comments and

its amended opening comments violated rule 14.3 and the ALJ's ruling extending opening comments to 25 pages (not counting the appendix containing proposed conclusions of law or findings of fact). CCC again violated Rule 14.3 and ALJ Cooke's order extending reply comments to 10 pages, when it filed its reply comments on June 4. The reply comments included on page 11 discussed CCC's time of use factor proposal (marked as attachment A). Pages 12-15 include an analysis (marked as attachment B), based on Resolution E-4049, which was decided after the record was closed in this proceeding.

2. CAC/EPUC's Reply Comments Violated Rule 14.3, as Modified By ALJ Cooke's Rulings.

CAC/EPUC also violated ALJ Cooke's ruling and this Commission's Rules. CAC/EPUC's reply comments contain 10 pages of argument, and 6 more pages of new "analysis," labeled as Table 1, Attachment B, and Attachment C. Table 1 suggests changes to the proposed decision. Attachment B contains CAC/EPUC's musings on "Sample Indicia of Functioning Power Market." Attachment C purports to compare the terms in the proposed decision to SCE's agreement with Mountainview Power Company. The latter two analyses, to the extent they can be characterized as such, are not contained in the record in this proceeding.

3. CAC/EPUC's and CCC's Additional Pages Should Be Stricken From The Record In This Proceeding.

As the Commission found in *Re AT&T Communications of California, Inc.*, D.02-09-049, pp.33-34, a motion to strike is an appropriate remedy where a party violates the Commission's page limit requirements for comments on a proposed decision. Here the ALJ already extended the page limits set forth in the Rules. CAC/EPUC and CCC could have asked the ALJ to further extend the page limits if they could not comply with the requirements. However, rather than making such a request which, if granted, would apply to all parties, they merely violated the

rules. The Commission should enforce its rules. While the utilities also found it difficult to constrain their comments to the page limitations set by ALJ Cooke, they did so. It would provide an unfair advantage to CCC and CAC/EPUC to allow them to submit additional analysis in violation of the page rule limitations, particularly where that analysis seeks to introduce new material not in the record.

III. CONCLUSION

For all the foregoing reasons, PG&E, SCE, and SDG&E respectfully request that the motion to strike be granted and that the appendices listed in Appendix C hereto be stricken from the record of this proceeding.

Respectfully submitted,

Pacific Gas and Electric Company,
Southern California Edison Company,
San Diego Gas and Electric Company.

/s/

By: Mary A. Gandesbery

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APPENDIX A

From: Gandesbery, Mary (Law)
Sent: Tuesday, June 05, 2007 3:31 PM
To: Way, Martie
Subject: FW: Courtesy E-mail Notification in R.04-04-003; R.04-04-025 -
ALJ Halligan's Proposed Decision

-----Original Message-----

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Sent: Friday, May 04, 2007 12:53 PM
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Subject: RE: Courtesy E-mail Notification in R.04-04-003; R.04-04-025 - ALJ
Halligan's Proposed Decision

I am writing to inform you that, at the request of the California Cogeneration Council, ALJ Michelle Cooke, in consultation with the Assigned Commissioner's office, has granted an extension of the due dates for comments on the Proposed Decision. Opening comments are now due on May 25, 2007. Reply comments are now due on June 1, 2007. In addition, the page limit for opening comments, as requested by the CCC, has been extended to 25 pages. Do not hesitate to contact me with any questions or comments on the foregoing. Joe

-----Original Message-----

From: Keller, Kris L. [mailto:K47@cpuc.ca.gov]

Sent: Tuesday, April 24, 2007 4:58 PM

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Subject: Courtesy E-mail Notification in R.04-04-003; R.04-04-025 - ALJ
Halligan's Proposed Decision

As a courtesy, the Commission notifies you that the text of ALJ Halligan's
Proposed Decision on Future Policy and Pricing for Qualifying facilities was
made available at the link below on 3/24/2007. A Notice of Availability has
been served by mail on all persons on the service list.

In case of problems with this e-mail or the internet link, please contact Kris
Keller at k47@cpuc.ca.gov.

<http://www.cpuc.ca.gov/EFIELD/PD/67150.htm>

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APPENDIX B

From: Gandesbery, Mary (Law)
Sent: Tuesday, June 05, 2007 3:31 PM
To: Way, Martie
Subject: FW: R.04-04-003/R.04-04-025: Proposed Decision of ALJ Halligan

-----Original Message-----

From: Berj.Parseghian@sce.com [mailto:Berj.Parseghian@sce.com]
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To all parties to R.04-04-025/R.04-04-003 (QF Issues):

Notice is hereby given that this afternoon, Administrative Law Judge Cooke granted Southern California Edison Company's request to extend the page limit for reply comments on the April 24, 2007 Proposed Decision of Administrative Law Judge Halligan to ten pages.

Please feel free to contact me if you have any questions or wish to further discuss this matter.

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APPENDIX C- LIST OF DOCUMENTS SUBJECT TO MOTION TO STRIKE

1. Comments of the California Cogeneration Council On The Proposed Decision of ALJ Halligan, dated May 25, 2007, Appendices B and C
2. Amended Comments of the California Cogeneration Council On The Proposed Decision of ALJ Halligan, dated May 31, 2007, Appendices B and C
3. Reply Comments of the California Cogeneration Council on The Proposed Decision of ALJ Halligan, filed June 4, 2007, Appendices A and B
4. Reply Comments of the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) filed June 4, 2007, Table 1 and Attachments B and C.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)
Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.	Rulemaking 04-04-025 (Filed April 22, 2004)

**[PROPOSED] ORDER ON MOTION TO STRIKE APPENDICES TO OPENING AND
REPLY COMMENTS OF THE CALIFORNIA COGENERATION COUNCIL AND
TO THE REPLY COMMENTS OF THE COGENERATION ASSOCIATION OF
CALIFORNIA AND THE ENERGY PRODUCERS AND USERS COALITION.**

On June 5, 2007, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) filed a Motion to Strike Appendices To Opening And Reply Comments Of The California Cogeneration Council And To The Reply Comments Of The Cogeneration Association Of California And The Energy Producers And Users Coalition. Good cause having been shown,

IT IS HEREBY ORDERED THAT:

- (1) The Motion of PG&E, SCE and SDG&E is GRANTED.
- (2) Appendices B and C to the Opening and Amended Comments Of The California Cogeneration Council dated May 24, 2007 and May 31, 2007, respectively, and all attachments to CCC's Reply Comments, dated June 4, 2007 are stricken.
- (3) All attachments to the Reply Comments Of The Cogeneration Association Of

California And The Energy Producers And Users Coalition, dated June 4, 2007 are
stricken.

DATED this ____ day of June, 2007, at San Francisco, California.

PRESIDING ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**MOTION TO STRIKE APPENDICES TO OPENING AND REPLY COMMENTS OF THE CALIFORNIA COGENERATION COUNCIL AND TO THE REPLY COMMENTS OF THE COGENERATION ASSOCIATION OF CALIFORNIA AND THE ENERGY PRODUCERS AND USERS COALITION** together with {**PROPOSED**} **ORDER ON MOTION TO STRIKE APPENDICES TO OPENING AND REPLY COMMENTS OF THE CALIFORNIA COGENERATION COUNCIL AND TO THE REPLY COMMENTS OF THE COGENERATION ASSOCIATION OF CALIFORNIA AND THE ENERGY PRODUCERS AND USERS COALITION**” on all known parties to the official service list for R.04-04-003/R.04-04-025 (QF Issues):

- transmitting an e-mail message with the document attached to each party providing an email address; or
- by first-class mail, postage prepaid, to each party not providing an email address.

Executed on June 5, 2007, at San Francisco, California.

/s/
MARTIE L. WAY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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CPUC DOCKET NO. R0404003-R0404025 (QF)

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Downloaded June 5, 2007, last updated on May 29, 2007

R0404003: Commissioner Assigned: Michael R. Peevey on April 6, 2004

ALJ Assigned: Carol A. Brown on August 12, 2004; **ALJ Assigned:** Mark S. Wetzell on April 6, 2004

R0404025: Commissioner Assigned: Michael R. Peevey on December 20, 2005

ALJ Assigned: Julie Halligan on April 28, 2004

CPUC DOCKET NO. R0404003-R0404025 (QF) CPUC REV 05-29-07

Total number of addressees: 195

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THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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R0404003: Commissioner Assigned: Michael R. Peevey on April 6, 2004

ALJ Assigned: Carol A. Brown on August 12, 2004; **ALJ Assigned:** Mark S. Wetzell on April 6, 2004

R0404025: Commissioner Assigned: Michael R. Peevey on December 20, 2005

ALJ Assigned: Julie Halligan on April 28, 2004

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Total number of addressees: 195

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